

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

WILLIAM EDWARDS DIETZ, JR.,

Plaintiff,

v.

Case No. 05-C-0792

RICK RAEMISCH,
SANDRA HAUTAMAKI,
CATHY JESS,
MICHAEL BECK,
MR. MARIANI,
MR. LOCKWOOD,
MR. J. KOK,

Defendants.

ORDER

On July 25, 2005, William Edward Dietz, Jr. ("Dietz") filed a complaint, alleging that his job in prison required him to enter areas that were filled with cigarette smoke. Dietz has filed a request for leave to proceed *in forma pauperis*.

Under the Prison Litigation Reform Act (PLRA), which amended the *in forma pauperis* statute, a prisoner must pay the applicable filing fees in full for a civil action. *See* 28 U.S.C. § 1915(b). If a prisoner does not have the money to pay the \$250.00 filing fee, he or she can request leave to proceed *in forma pauperis*. To proceed with an action or appeal *in forma pauperis*, the prisoner must complete a petition and affidavit to proceed *in forma pauperis* and return it to the court along

with a certified copy of the prisoner's trust account statement showing transactions for the prior six months. *See* 28 U.S.C. § 1915(a)(2). The court then will assess and, when funds exist, collect from the prisoner at the time the action or appeal is filed an initial partial filing fee. The initial partial filing fee is twenty percent of either the average monthly deposits to or average monthly balance in the prisoner's trust account for the six-month period immediately preceding the filing of the complaint or appeal, whichever is greater. *See* 28 U.S.C. § 1915(b)(1).

After the initial fee is paid, the prisoner must make monthly payments of twenty percent of the preceding month's income ("income" consists of all deposits from whatever source, including gifts and bequests, *see Lucien v. DeTella*, 141 F.3d 773, 776 (7th Cir. 1998)) until the filing fee is paid in full, *see* 28 U.S.C. § 1915(b)(2). The agency that has custody of the prisoner will collect the money and send payments to the court. No payment is required in months when the prisoner's preceding month's income is \$10.00 or less. *See* 28 U.S.C. § 1915(b)(2). The prisoner is obligated to pay the entire \$250.00 filing fee whether or not this action is later dismissed by the court or otherwise resolved.

Along with his request to proceed *in forma pauperis*, Dietz filed a certified copy of his prison trust account statement for the six-month period immediately preceding the filing of his complaint, as required under 28 U.S.C. § 1915(a)(2). A review of this information reveals that for the six-month period immediately

preceding the filing of his complaint, the average monthly deposit to Dietz's prison account was \$18.20 and the average monthly balance was \$25.83. Thus, in accordance with the provisions of 28 U.S.C. § 1915(b)(1), Dietz is required to pay an initial partial filing fee of \$5.17. Subsequent payments will be calculated and collected pursuant to 28 U.S.C. § 1915(b)(2).

The PLRA also provides that if a prisoner files more than three actions or appeals which are dismissed as frivolous or malicious or for failure to state a claim upon which relief can be granted, the prisoner will be prohibited from bringing any other actions *in forma pauperis* unless the prisoner is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). In the event that this action is later dismissed for any of the above reasons, it will have an impact on Dietz's ability to bring other actions *in forma pauperis*. Accordingly, Dietz will be afforded an opportunity to dismiss this action voluntarily in order to avoid the possibility of incurring a "strike" under section 1915(g).

If Dietz does not wish to pay the filing fee as set forth in this order or does not wish to proceed with this action in order to avoid the possibility of incurring a "strike" under section 1915(g), he must notify the court by letter to the clerk within 20 days of the date of this order, stating that he does not wish to prosecute this civil action. If Dietz elects to write a letter withdrawing his lawsuit, this case

will be dismissed without prejudice. Voluntary dismissal will not be counted as a "strike" under section 1915(g).

If Dietz does not withdraw his complaint, the court will determine whether the action can continue to proceed *in forma pauperis*. The court will review the complaint to determine that the action is not frivolous or malicious and that the complaint states a claim upon which relief can be granted. If the complaint does not meet these standards, the action will be dismissed. See 28 U.S.C. § 1915(e)(2)(B). Whether or not the complaint is dismissed at this stage, the plaintiff must pay the entire \$250.00 filing fee.

Accordingly,

IT IS ORDERED that, if he elects to proceed with this action, Dietz shall pay an initial partial filing fee of \$5.17 within 20 days from the date of this order.

Dated at Milwaukee, Wisconsin this ____ day of August, 2005.

BY THE COURT:

s/J.P. Stadtmueller
J.P. STADTMUELLER
U.S. District Judge